



Arizona Medical Board

9545 East Doubletree Ranch Road • Scottsdale, Arizona 85258

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DRAFT MINUTES FOR EMERGENCY SUMMARY ACTION MEETING

Held at 12:00 p.m. on Friday July 13, 2007

9545 E. Doubletree Ranch Road • Scottsdale, Arizona 85258

Board Members

William R. Martin III, M.D., Chair
Douglas D. Lee, M.D., Vice Chair
Dona Pardo, Ph.D., R.N., Secretary
Dan Eckstrom
Robert P. Goldfarb, M.D., F.A.C.S.
Patricia R.J. Griffen
Ram R. Krishna, M.D.
Todd A. Lefkowitz, M.D.
Lorraine L. Mackstaller, M.D.
Paul M. Petelin Sr., M.D.
Germaine Proulx
Amy J. Schneider, M.D., F.A.C.O.G.

CALL TO ORDER

The meeting was called to order at 12:00 pm.

ROLL CALL

The following Board Members were present: Dr. Goldfarb, Dr. Krishna, Dr. Lee, Dr. Lefkowitz, Dr. Martin, Dr. Petelin, Ms. Proulx, and Dr. Schneider. The following Board Members were absent: Mr. Eckstrom, Ms. Griffen, Dr. Mackstaller, and Dr. Pardo.

CALL TO THE PUBLIC

Statements issued during the call to the public appear below.

NO.	CASE NO.	COMPLAINANT v PHYSICIAN	LIC. #	RESOLUTION
1.	MD-07-0412A	AMB ELI J. HAMMER, M.D.	17176	Summary Suspension

Lorraine Brown, Case Manager, summarized the case for the Board. On May 16, 2007, Board Staff was notified the Drug Enforcement Administration (DEA) executed a search warrant for Dr. Hammer's office. Board Staff opened an investigation based upon the information provided. Dr. Hammer was interviewed by Board Staff and ordered to undergo a hair and urine test. He tested positive for Benzodiazepines, specifically Xanax. Dr. Hammer was again interviewed by Board Staff and assessed by the Board's addictionologist. During this interview Dr. Hammer admitted to receiving Xanax from a family member, but would not identify the family member. David Greenberg, M.D., Board Addiction Medicine Consultant, opined that he was suspicious Dr. Hammer may have written the prescription and diverted the medication back to himself and recommended the possible diversion be investigated. At a subsequent interview Dr. Hammer provided the name of his relative and admitted to writing the prescription and getting the medication from this prescription for himself. The Addiction Medicine Consultant opined that based on the diversion of Xanax from the relative to himself and the apparent cover-up of this fact Dr. Hammer appeared to have attempted to obtain controlled substances by fraud and deceit. As a result, the Addiction Medicine Consultant recommended an in-patient evaluation. On June 29, 2007, the Board issued an Interim Order for Dr. Hammer to undergo an inpatient evaluation within 14 days of the Order at a Board approved facility. On July 11, 2007, Dr. Hammer's attorney, Debbie Hill, informed Staff that Dr. Hammer was currently undergoing an evaluation with an undisclosed practitioner that the Board has previously relied upon. To date, Staff has no knowledge or evidence to support that Dr. Hammer has undergone an evaluation as ordered by the Board. Dr. Hammer continues to refuse to submit to the Board ordered inpatient evaluation at a Board approved facility. Ms. Brown noted Dr. Hammer's refusal to be regulated by the Board presents an imminent danger to the public.

Eli Hammer, M.D. was present with counsel, Larry A. Hammond and Debra A Hill. According to Mr. Hammond, the statement that Dr. Hammer had admitted to prescribing and diverting Xanax for his personal use was not true. Mr. Hammond noted that Staff did not provide a copy of the investigational interview to Dr. Hammer as requested and; therefore, they had no evidence that Dr. Hammer admitted to the prescribing/diversion. Dr. Hammer has been practicing for over 20 years and has not had a Board complaint prior to this incident and Mr. Hammond noted that Dr. Hammer has cooperated fully throughout the course of the investigation. Ms. Hill had previously informed Staff that Dr. Hammer obtained the Xanax from his wife, who in turn, obtained the medication from her brother. Dr. Hammer had prescribed the Xanax to his brother-in-law for a panic disorder. Dr. Hammer admitted to taking one-half of one milligram while traveling to and from Europe. Dr. Hammer answered all of the questions during the investigational interview regarding alcohol consumption and the Board's contracted addiction medicine consultant, David Greenberg, M.D. stated, at that time, he did not feel Dr. Hammer had a substance abuse problem. Staff gave no indication that that an evaluation would be required and that the issue of alcohol impairment was not brought up by Staff during the investigative interview. Mr. Hammond stated Dr. Hammer is not an alcoholic and is only a social consumer of alcohol. Mr. Hammond stated that the only evidence the Board cited is an ethyl glucuronide (EtG) test, which simply tests for the existence of metabolized alcohol. He stated this test is not used to determine if a physician has alcohol impairment and that it is not a suitable test to support the Board's allegations. Mr. Hammond informed the Board that Dr. Hammer recently underwent an evaluation with Philip Lett, Ph.D. and his office will submit Dr. Lett's findings when the evaluation is received. He also stated that Dr. Hammer will be undergoing an evaluation with a James Schulte, M.D. and he will also provide Dr. Schulte's findings to the Board.

Ms. Brown informed the Board the investigational transcript indicates that Dr. Hammer did admit to prescribing to a family member. Staff also obtained pharmacy surveys that confirm Dr. Hammer was prescribing Xanax to a family member. She stated the issue for Board consideration is whether Dr. Hammer violated his Interim Order for Evaluation by not presenting to the Evaluation within 14 days. Dr. Lee asked what evidence Staff obtained to support the allegation of drug diversion. Ms. Brown stated that Dr. Hammer admitted to prescribing the medication to his brother-in-law and then taking the medication. Dr. Krishna clarified that Staff also obtained pharmacy surveys that support the allegation.

Dr. Petelin asked for clarification regarding the significance of the high number reported on the EtG results. Ms. Brown informed him that the EtG cutoff level is 500 and Dr. Hammer's EtG was over 10,000 and that the EtG tests for prior use and can detect alcohol consumption for up to a week. Dr. Martin stated that the issue was that a Board Order was issued requiring Dr. Hammer to undergo an inpatient evaluation but he chose not to do so. Dr. Goldfarb agreed that the Board should proceed with the issue at hand. Dr. Krishna noted there was drug diversion based upon the evidence provided and Dr. Hammer has violated the Board Order and by refusing to undergo the evaluation Dr. Hammer is unregulatable and the public's safety needs to be protected.

MOTION: Dr. Krishna moved to summarily suspend Dr. Hammer's license based on an imminent threat to public health and safety.

SECONDED: Dr. Lee

Dr. Goldfarb spoke in favor of the motion, but stated he would only be in favor of a motion for failure to obey the Order for Evaluation. He stated that he needed more information regarding the drug diversion in order to find him in violation. Dr. Krishna stated that Dr. Hammer admitted that he prescribed to a family member and also admitted to taking the Xanax after prescribing it. Christine Cassetta, Board Legal Counsel stated that the only issue at hand is Dr. Hammer's failure to obey the Order. Dr. Krishna clarified his motion was based on the refusal to obey the Interim Order.

MOTION: Dr. Martin moved to enter into Executive Session.

SECONDED: Dr. Goldfarb

VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 4-absent.

MOTION PASSED.

The Board went into Executive Session at 12:35 p.m.

The Board returned from Executive Session at 12:40 p.m.

AMENDED MOTION: Dr. Krishna moved to Summarily Suspend Dr. Hammer's license based on an imminent threat to the public health and safety by his refusal to obey the Order, stay the Suspension and order the physician to undergo an evaluation within 14 days of the date of the Order. Should Dr. Hammer refuse to undergo the evaluation, the Summary Suspension would take effect.

SECONDED: Dr. Lee

Dr. Martin stated that Dr. Hammer defied the first Order that required him to undergo an evaluation within 14 days and felt it was too lenient and the Board should only allow him an additional seven days to undergo the evaluation. Dr. Krishna disagreed and stated that the 14 day deadline seemed appropriate. Dr. Lee spoke against the motion. He stated that there was not enough evidence to make him believe that Dr. Hammer would obey this second Order since he did not obey the first. Dr. Krishna stated that he chose to stay the suspension in hope that Dr. Hammer would realize the seriousness of the Board's Order and wanted to give him the opportunity to undergo the evaluation.

ROLL CALL VOTE: Roll call vote was taken and the following Board Members were in favor of the motion: Dr. Krishna and Dr. Martin. The following Board Members voted against the motion: Dr. Goldfarb, Dr. Lee, Dr. Lefkowitz, Dr. Petelin, Ms. Proulx, and Dr. Schneider. The following Board Members were absent: Mr. Eckstrom, Ms. Griffen, Dr. Mackstaller, and Dr. Pardo.

VOTE: 2-yay, 6-nay, 0-abstain, 0-recuse, 4-absent.

MOTION FAILED.

MOTION: Dr. Lee moved to summarily suspend Dr. Hammer's license based on an imminent threat to public health and safety by his refusal to obey the Order and purposeful violation of the Board order.

SECONDED: Dr. Petelin

ROLL CALL VOTE: Roll call vote was taken and the following Board Members voted in favor of the motion: Dr. Lee, Dr. Goldfarb, Dr. Lefkowitz, Dr. Petelin, Ms. Proulx, and Dr. Schneider. The following Board Members voted against the motion: Dr. Krishna and Dr. Martin. The following Board Members were absent: Mr. Eckstrom, Ms. Griffen, Dr. Mackstaller, and Dr. Pardo.

VOTE: 6-yay, 2-nay, 0-abstain, 0-recuse, 4-absent.

MOTION PASSED.

The meeting adjourned at 12:47 p.m.

Timothy C. Miller, J.D., Executive Director